

No. 21814 ✓

SEP 18 1968

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

J. HOWARD ARNOLD

vs.

WILLIAM J. MCGUINNESS

APPELLANT

APPELLEE

PETITION FOR REHEARING

Appeal from the  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FILED

SEP 13 1968

WM. B. LUCK, CLERK

J. HOWARD ARNOLD

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Appellant, pro se



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A P P E L L A N T

VS.

WILLIAM J. McGUINNESS

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P E T I T I O N   F O R   R E H E A R I N G

Appeal from the

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FOR THE DISTRICT OF COLUMBIA

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the Honorable GILBERT R. JERTBERG, Circuit Judge,  
BEN CUSHING DUNIWAY, Circuit Judge,  
ROGER D. FOLEY, District Judge,  
Judges of the United States Court of Appeals for the Ninth Circuit.

This Petition for Rehearing is respectfully presented to direct the Court's attention to certain controlling matters of fact and law which appear to have been overlooked in the course of rendering the decision of August 5, 1968, in this case.

I

THE OPINION FAILS TO JUSTIFY THE DECISION. Like the opinion in Case No. 853, also decided August 5, the 5-line Per Curiam opinion in this case completely fails to justify explicitly the anomalous and erroneous decision rendered:

"We have carefully considered appellant's assignments of error and they have no merit. We agree with and adopt the decision of the district court. We also reaffirm this Court's prior decisions, wherein J. Howard Arnold was twice before this Court as the appellant."

The decision of the District Court, accompanying its denial of a hearing on Appellant's motion to amend, failed completely to come grips with the basic issue, disqualification for interest, but sought, by misrepresenting the wording of the statute, to substitute waivable disqualification for bias and prejudice. Neither the District Court nor this Court, in the first McGuinness case, has ever made and stated a determination of the issues of the lack of subject-matter jurisdiction resulting from (1) the defective complaint or (2) the petition to quash. In the absence of such explicit determination of one issue among several, vagueness forbids application of res judicata doctrine to eliminate these issues, as Judge Carter has done. If there



was any reason to nullify the ancient principle of invoking subject-matter jurisdiction by filing a valid complaint, or any basis for ignoring the effect of a quashing statute that no State Supreme Court decision has yet declared void, that reason should have been stated. In the absence of such explicit statement, it must be presumed that the courts never reached the merits of the cases, but made arbitrary decisions based on extraneous circumstances peculiar to the given case, and with neither intention nor capability of establishing a precedent for res judicata. In the absence of answers to these three questions -- answers readily provided by jurisdictional law -- it is tragically obvious that justice according to law has not been rendered.

## II

THE DISTRICT COURT DECISION ADOPTED IS ABSURD AND UNTENABLE. Judge Carter, in arriving at a decision adverse to Appellant, committed three errors: (1) He failed to consider disqualification for interest ignoring Appellant's principal contention; (2) He misquoted Section 170(5), which he sought to force upon Appellant in lieu of Section 170(1), replacing an unwaivable disqualification by a waivable one which Appellant was neither in position nor under obligation to use; (3) He erroneously charges Appellant with contending that Appellee lost jurisdiction because he "could have been disqualified", when the actual contention was that disqualification for interest and loss of jurisdiction were automatic. These errors are original with Judge Carter's opinion, and do not appear in Appellee's brief (which at least met Appellant's arguments, though ineffectively). Like Appellee Judge Carter ignores the priority taken by stare decisis over the res judicata doctrine which he is too eager to apply to decisions







which possess only the necessary priority in time but lack the more necessary validity of a truly final adjudication.

### III

FEDERAL COURTS SHOULD ACCEPT STATE COURT INTERPRETATION OF STATE LAW. It is incumbent upon Federal courts, trial and appellate, to honor the interpretation of State laws made by the courts of the State, or in the absence of such interpretation to make their own, de novo. In the case at bar, the courts have done neither, but simply ignore the well established applicability of the disqualification-for-interest and the quashing statutes embodied in California law. Appellant has shown (Closing Brief, pp. 2-6) that the State courts have indeed interpreted the disqualification-for-interest statute favorably to his case. The quashing statute is likewise firmly upheld by prior State decisions (Clerk's Tr., pp.22-23) and should not be summarily disregarded by the Federal courts. To dismiss a prior case without express justification, ignoring State court decisions and stare decisis doctrine, then to point to that prior decision as res judicata, merely compounds the preposterousness of this Court's procedure without justifying it. The Court overlooks the principle that a void judgment is not validated by subsequent affirmation.

### IV

THE BOSTICK DECISION IS IRRELEVANT AS WELL AS ERRONEOUS. Appellee's counsel persist in using the word "jurisdiction" without qualification, in order to draw unfounded analogies between cases. In Arnold v Bostick, quasi in rem jurisdiction was involved, and the case is not in point here. This Court adopted the opinion of the State Court of



appeal, which was based on two cases not in point and ignored many federal court decisions of opposite effect, for the evident purpose of upholding arbitrarily a wholly unjustifiable divorce-court order. The opinion in Arnold v. Bostick was written by Judge Hamlin, who had previously refused to disqualify himself even after Appellant's urging although he had long been a Superior Court judge in Alameda County. This Court's reaffirmation of the Arnold v. Bostick decision is not pertinent to the instant case, except perhaps to underline the application, in both cases, of the extra-legal doctrine that no judge is ever liable for damages in a civil suit for false imprisonment and a citizen of the United States cannot recover damages under the Civil Rights act when the defendant is a judge (Opening Brief, pp. 12-14).

V

THE DECISION REFLECTS UNFAVORABLY UPON THE COURT. It is significant that Appellant is (1) A disfavored litigant, unable to provide hired professional counsel, (2) A critic and antagonist of the injustice in California divorce courts, (3) An Alameda County resident involved in local politics in that highly corrupt county. Under these circumstances a decision adverse to him should bear close scrutiny and be clearly above the suspicion of being motivated by considerations other than justice according to law. This decision, Appellant's sixth in this court, follows a now established pattern of brevity of opinion, lack of conformity to established State and Federal law, and twisted logic in attempted justification of an obviously wrong decision. In the circumstances, it does not appear unreasonable for the public to expect of this Court a detailed opinion, squarely meeting the issues and explaining legal basis for the decision, together with a decision that is





emonstrably in full accord with State and Federal law as interpreted  
y prior court decisions. In this case, no less than in others heard  
ith a full complement of attorneys, the decision should be "free from  
he probability of prejudice" arising from extraneous circumstances.

#### CONCLUSION

his Pétition for Rehearing should be granted, the decision reversed,  
nd a clarifying opinion of suitable length appended to the decision.

ated: September 4, 1968.

Respectfully submitted,

J. Howard Arnold  
Appellant, pro se

University of California, Berkeley  
In this case, the only evidence  
is the statement of the witness  
who is not a party to the case.

There is no other evidence  
to support the claim that  
the witness is not a party  
to the case.

It is therefore concluded  
that the witness is not a party  
to the case.

*(Signature)*  
[Illegible text]